

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
NORTHERN DIVISION
No. 2:13-CR-6-BO
No. 2:16-CV-17-BO

TAIWAN JERMAINE SMITH,)
 Petitioner,)
)
v.)
)
UNITED STATES OF AMERICA,)
 Respondent.)

ORDER

This cause comes before the Court on petitioner's motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255. The government has responded to the motion, conceding that the relief which petitioner seeks is warranted.

BACKGROUND

Petitioner pleaded guilty pursuant to a plea agreement to one count of possession of a firearm by a convicted felon in violation of 18 U.S.C. §§ 922(g) and 924 and was sentenced to a term of 210 months' imprisonment. By opinion entered March 18, 2015, petitioner's conviction and sentence were affirmed by the court of appeals.

DISCUSSION

Petitioner contends that he is no longer properly classified as an armed career criminal in light of *Johnson v. United States*, 135 S.Ct. 2551 (2015), and *Welch v. United States*, 136 S. Ct. 1257 (2016). In *Johnson*, the Supreme Court held that the residual clause of the Armed Career Criminal Act, 18 U.S.C. § 924(e), is unconstitutionally vague. 135 S.Ct. at 2557. In *Welch*, the Supreme Court held that *Johnson* applies retroactively on collateral review. 136 S.Ct. at 1265.

The government, having waived its procedural defenses, as well as petitioner argue that application of *Johnson* to petitioner's criminal history results in insufficient qualifying predicate convictions necessary to be sentenced as an armed career criminal under § 924(e). The Court agrees, and holds that resentencing of petitioner without application of the Armed Career Criminal Act is warranted.

CONCLUSION

Accordingly, for the foregoing reasons, petitioner's motion to vacate pursuant to 28 U.S.C. § 2255 [DE 62] is GRANTED, petitioner's sentence is hereby VACATED, and this matter shall be set for resentencing by separate notice.

SO ORDERED, this 22 day of June, 2016.


TERRENCE W. BOYLE
UNITED STATES DISTRICT JUDGE